by three men. They stabbed him in the neck and in the waist. His right leg is now partially paralysed.

And recently on October 25, a stipendiary steward of the Malaysian Racing Association was set upon by two men with iron rods at the Sri Pantai Motel in Tanjong Bungah, Penang. "T.C." as he is popularly known is still in hospital. He may never be able to use his right arm again.

"Racing is regarded as the sport of kings" writes Robert M.B. Rushford in the *National Echo* of August 26, 1984, "but if the 'kings' of the underworld can gain control by threats and violence it is going to be a sorry day for the punters and fans who love the sport just for the sake of the sport itself." In an interview for *The Star* newspaper of March 28, 1985, Velu, speaking from his hospital bed, "urged the Government to step in and break up the Mafia-type syndicates which he alleged controlled 70 per cent of the sport now." "Local jockeys, including stable boys, are often bullied by these syndicates and corruption is well known in racing circles," said Velu.

Of course, the respondent is not responsible for the acts of terrorism which I have just adverted to. Nor am I saying that he should be punished for them. But a bookmaker who operates near the apex of the pyramid of this illicit industry cannot thrive without support from his agents, employees and runners who operate on a smaller scale nearer the base of the pyramid. The respondent says that he was doing it for a "friend." This illicit industry can be crippled if the courts of this country start to hand down stiff prison terms to those who have committed offences relating to bookmaking. Bookmaking is a serious crime and because such offences are rife in the country the courts inevitably must take a grave view and impose a deterrent sentence on those who are minded to commit so evil and profitable a crime.

The courts are determined to do all they can to keep the underworld from infiltrating into legitimate sport in this country and to punish severely anyone who indulge in organised crimes. "We have to remember," said Lawton L.J. in *R.* v. *Davies,*[2] "that it has been the sentencing policy of trial courts for many years now to sentence to longish terms of imprisonment those who indulge in organised crimes. That policy has been approved by this Court."

It is in the interest of the public that the unrealistic kind of sentence which was imposed in this case should not be upheld. Accordingly, the appeal is allowed and I enhance the sentence by adding to it a prison term of 18 months. The fine is also increased from $2,000 to $20,000; in default six months' imprisonment.

Appeal allowed.
Sentence enhanced.

NANI v. W.G. WILLIAMS

[O.C.J. (Edgar Joseph Jr. J.) November 5, 1982, April 25 & 28,1983, June 9 & 11, 1983, January 30, 1984]

[Penang – Civil Suit No. 417 of 1981]

Damages – Fatal accident – Army personnel – Driver wholly to blame – Quantum.

The deceased was a 36-year-old Staff Sergeant in the Malaysian Armed Forces. He was killed in a road accident on July 5, 1981 leaving behind a 26-year-old widow and 3 children aged 12, 8 and 3 years respectively. The defendant driver was found wholly to blame for the collision and now appeals against the quantum of damages.

Held: (1) the plaintiff is awarded as follows:

(a) $20,980 being special damages for pre-trial loss of earnings;

(b) $61,773.88 being general damages for post-trial loss of future earnings in respect of pre-retirement period;

(c) $18,532.17 being general damages for post-trial loss of future earnings in respect of post-retirement period;

(d) $61,797.12 being general damages for loss of pension;

(e) $14,417.34 being general damages for loss of gratuity;

(f) $1,534 being agreed special damages;

(2) the damages are apportioned as follows:

(a) $57,500.51 to the widow;

(b) $35,000 to the daughter Rookini, aged 12;

(c) $35,000 to the daughter Shanti, aged 8;

(d) $50,000 to the son Balamurugan, aged 3;

(3) the children's share of damages be paid to the Public Trustee to be held by him, in trust, pending the attainment of the age of majority in each case but with liberty to apply.

[*Editorial Note:* Appeal by the defendant has been withdrawn. There was no order as to costs and deposit was refunded to the appellant.]

Cases referred to;

(1) *Cookson* v. *Knowles* [1978] 2 All E.R. 604, 612.
(2) *Kow Ah Dek* v. *K. Ratnasingam* [1981] 2 M.L.J. 24, 26.
(3) *Murtadza bin Mohamed Hassan* v. *Chong Swee Pian* [1980] 1 M.L.J. 216.

CIVIL SUIT.

N.T. Vello for the plaintiff.
Balachandran Mahesan for the defendant.

Edgar Joseph Jr. J.: Madam Nani d/o Nagoo, the unfortunate 26-year-old widow in this case and the mother of three children aged 12, 8 and 3 years respectively, lost her husband, a 36-year-old Staff Sergeant in the Malaysian Armed Forces (deceased) in a road accident on July 5, 1981.

At the conclusion of the hearing I found the defendant driver wholly to blame for the collision and, as regards quantum, reserved my decision. I subsequently made the award for damages and, though initially, the defendant had lodged a notice of appeal against the whole of my decision, the present position is that his appeal is only against the quantum of damages. In the circumstances, I shall confine this judgment to that issue only.

The unchallenged evidence in this case was that the deceased, an obviously healthy man, was at the date of the accident in receipt of a salary of $795 p.m. and a service allowance of $45 p.m., thus amounting to $840 p.m. It was also not disputed that had the deceased not died in the accident he would have attained the rank of a Warrant Officer II in 1985 and would then have been in receipt of a salary of $985 p.m. and a service allowance of $45 p.m. thus amounting to $1,030 p.m.

On the above basis, and applying the principles enunciated in *Cookson* v. *Knowles*,[1] it was agreed that pre-trial loss of earnings should be assessed at the rate of $1,030 p.m. from the date of accident to April 28, 1983, being the date of commencement of trial, thus resulting in the sum of $20,980.

There was, however, a considerable dispute regarding the issues of loss of future earnings and the value of the loss of dependency.

Counsel for the defendant submitted that the widow had herself admitted that the deceased gave her $750 p.m. out of which she returned $200 to the deceased to enable him to repay the monthly instalments on a car loan and a further sum of $100 – $150 p.m. for pocket expenses. On this basis, it was submitted that the value of the dependency was $400 p.m.

It was further submitted that the probabilities were that had the deceased not died in the accident, he would have completed 21 years of service in 1985 and would have qualified for a pension due to a Warrant Officer II. Thereafter, it was conceded, that though the deceased had no special qualifications, he would probably have continued to be gainfully employed as a Security Officer in a factory or a rubber estate until the age of 55. Thus the deceased, so the submission went, could be expected to have maintained the same standard of living to which he had been accustomed at the time of the accident.

It was accordingly submitted that the appropriate period of dependency, that is to say, the multiplier, should be 10 years and that, therefore, the correct sum to be awarded under this head was $37,056.

As regards gratuity, it was urged that on the assumption that the deceased would have retired as a Warrant Officer II in 1985, after 21 years of service, and been in receipt of a last-drawn salary of $985 p.m.; the gratuity he would have received, applying the appropriate Army formula, would have been $12,411. As the widow had previously received $7,000 of this sum, only the difference, that is to say, $5,411, would still have to be paid to her and this should be the proper sum to award under this head.

As regards pension, it was urged that had the deceased retired as a Warrant Officer II in 1985, the pension he would have received, again applying the appropriate Army formula, would have been $477.34. On the assumption that the deceased had a life-span of 68 years, the total pension he would have drawn for 27 years at this rate would have amounted to $154,658.16. However, the widow has been, and still is, in receipt of a pension of $276.76 p.m. and this would have to be reduced by $136,264.32. Consequently, it was said that the difference of $18,400.32 was the appropriate sum to be awarded under this head.

I shall now consider the submissions of counsel.

I did not accept that the deceased would have retired from the Army in 1985 had he not died in the accident. On the contrary, the probabilities are, that having regard to his service record as deposed to by his immediate superior, Major J. Koran (P.W.4), and I so found, that the deceased would have continued in service in the Army until 1993 when he would have retired, at least as a Captain, at the age of 48, on a salary scale appearing at page 2 of the Exhibit P1, that is to say, $1,560 p.m.

Accordingly, I assessed general damages for future loss of earnings as regards the pre-retirement period on the basis of 10 years' purchase and a dependency of $1,000 p.m., after taking into account the incidence of Income Tax. Applying the Actuarial Tables, this would yield a sum of $92,660.82. From this sum, I deducted 1/3 to allow for contingencies, the vicissitudes of life, accelerated payment in a lump sum and for what would have been spent on the deceased. The resulting figure was $61,773.88 which I awarded.

Next, I thought it would be wholly wrong to assume that upon his retirement in 1993 the deceased would have lost all capacity to earn. Counsel for the defendant had himself conceded, and I so found, that with his training the deceased could have secured employment in the private sector as a security guard in a factory or a rubber estate. I also think that it could be reasonably inferred from his station in life that he must have been in good health and active. As Salleh Abas C.J. (Malaya) said in *Kow Ah Dek* v. *K. Ratnasingam*:[2]

"... We however agree that employment after retirement from the public service at the age of 55 is a common occurrence which should be taken into consideration."

If not injured the respondent being a teacher would likely give a least private tuition to some needy pupils. The income from such occupation may be fixed to be at $600 p.m. and taking into consideration various contingencies, such as illness and lack of interest in taking up post-retirement job we think it is fair that we should fix 5 years of purchase."

I accordingly thought that I should make an award for general damages for loss of support in respect of the post-retirement period. For this purpose, I took a multiplier of ten years and a multiplicand of $300 p.m. Applying the Actuarial Tables, this would yield $27,798.25 from which I deducted $9,266.08 to allow for contingencies, vicissitudes of life, accelerated payment in a lump sum and for what would have been spent on the deceased. The resulting figure was $18,532.17.

As regards loss of pension, a Captain's pension for twenty years at $954 p.m. would amount to $228,960. From this, I deducted the pension the widow has been, is receiving and is likely to receive until she attains the age of 68 years – her probable life-span – which at the rate of $276.96 would amount to $136,264.32. The resulting figure after this deduction is $92,695.68. From this, I also deducted one-third thereof to allow for contingencies, vicissitudes of life, accelerated payment in a lump sum and for what would have been spent on the deceased. The resulting figure was $61,797.12 which I awarded under this head.

As regards loss of gratuity, on the assumption that the deceased would have retired as a Captain in 1993, the last-drawn salary of $1,560 and applying the appropriate Army formula in P1, that is to say, 5% of last-drawn salary x number of months served, namely, 367, this resulted in the sum of $28,626. From this sum, I deducted the gratuity of $7,000 which had been paid to the widow. The resulting sum was $21,626 and from this I also deducted one-third thereof to allow for contingencies, vicissitudes of life, accelerated payment in a lump sum and what would have been spent on the deceased. The resulting figure was $14,417.34.

There were certain small items of special damages amounting to $1,534 which were agreed and in respect of which I made an award accordingly.

In the result, I gave judgment for the plaintiff as follows:

(a) $20,980 being special damages for pre-trial loss of earnings;

(b) $61,773.88 being general damages for post-trial loss of future earnings in respect of pre-retirement period;

(c) $18,532.17 being general damages for post-trial loss of future earnings in respect of post-retirement period;

(d) $61,797.12 being general damages for loss of pension;

(e) $14,417.34 being general damages for loss of gratuity; and

(f) $1,534 being agreed special damages.

Except for the sum of $1,534, being the agreed special damages which I ordered to be paid to the widow, I apportioned the damages awarded as follows:

$57,500.51 to the widow;
$35,000 to the daughter Rookini, aged 12;
$35,000 to the daughter Shanti, aged 8; and
$50,000 to the son Balamurugan, aged 3.

I also directed that the children's shares of damages be paid to the Public Trustee to be held by him, in trust, pending the attainment of the

age of majority in each case but, with liberty to apply.

As to interest, the position in law is that special damages attract interest at the rate of 3% per annum from date of accident to the date of trial but no interest should be allowed for damages for loss of future earnings (*Murtadza bin Mohamed Hassan* v. *Chong Swee Pian*[3]). I therefore made a further order accordingly. It goes without saying that the judgment debt will also attract interest at the rate of 8% per annum from the date of judgment until satisfaction by virtue of the provisions of Order 42 rule 12 of the *Rules of the High Court, 1980.*

I lastly ordered the defendant to pay the taxed costs of this action.

Order accordingly.

Solicitors: *Chang & Vello; Bala Mahesan & Co.*

BRUNEI REPORT

PUBLIC PROSECUTOR v. NASAR BIN AHMAD & ORS.

[O.Cr. J. (Roberts C.J.) September 22, 1984]

[Bandar Seri Begawan – Criminal Trial No. 14 of 1984]

Penal Code (Brunei Cap. 22), ss. 34 & 375 – Rape and attempted rape – Common intention – Credibility of victim – Corroboration – Neutral medical evidence – Sentence – Penal Code (Brunei Cap. 22), ss. 34 & 375.

Evidence – Rape – Credibility of victim – Corroboration.

The first charge in this criminal trial alleged that all the three defendants raped the complainant Miss X, a 23-year-old divorcee and mother of two children at Meragang on July 16, 1984. The second charge alleged that D1 and D2 raped Miss X at Kampong Subok later on the same morning.

In respect of the second charge, she testified that she was subsequently driven by D2 to Kampong Subok, where D1 and D2 had sexual intercourse with her in a house against her will. She made her police report on the following day, shortly after midnight. She was medically examined about 48 hours after the rape was alleged to have taken place. The prosecution case on the first charge was corroborated by two independent eye witnesses. On the second charge, it had to rely on the evidence of Miss X alone.

In their defence, D1 gave evidence on oath and D2 and D3 made unsworn statements from the dock. They all maintained that they never had intercourse with Miss X.

Held: (1) on the first charge as in almost all sexual cases, the credibility of the victim is the most important single issue to be determined. Miss X was a credible witness;

(2) it is dangerous to convict on the uncorroborated evidence of the complainant. PW5 and PW7 saw Miss X unclothed and each of the three defendants having intercourse with her on the front seat of the Mazda against her will. The medical evidence must be regarded as neutral;

(3) D1 and D3 were convicted of rape, and D2 of attempted rape. Section 34 of the Penal Code is not applicable;

(4) D1 was sentenced to 7 years' imprisonment, to begin at the end of sentence in case No. 1512/84. D2 was sentenced to 5½ years, with effect from July 20, 1984. D3 was sentenced to 4½ years, with effect from July 20, 1984;

(5) D1 and D2 were acquitted of the second charge although it was open to the learned Judge to convict them.

CRIMINAL TRIAL.

Ivan Leong (Deputy Public Prosecutor) for Public Prosecutor.

Accused in person.

Cur. Adv. Vult.

Roberts C.J.: *Preliminary.* The three accused are charged with the rape of a woman who is referred to in the evidence as Miss X, though her real name is contained in the charges and has been identified by the various witnesses as they gave evidence.

The first charge alleges that the three defendants raped Miss X at about 1.30 in the morning on July 16, 1984 at Pantai Meragang, Muara. The second charge alleges that Nasar (D1) and Suhaili (D2) raped the same woman later the same morning in a house at Kampong Subok.

There were originally six young men who were thought to have been implicated in these offences. In addition to these three defendants, Haji Morni bin Haji Mahrop (P.W.5) and Tuah bin Haji Timbang (P.W.7), both of whom were called as prosecution witnesses, were charged with these defendants, but released by the magistrate when the prosecution offered no evidence against them. Jurol, a brother of D2, is also named in the charge. However, the police have not been able to arrest him, although they have searched for him.

During the course of the trial, the earlier